WONG KIN HOW & ANOR.

v.

HAYATI ZAHARI & ANOR.

HIGH COURT MALAYA, KUANTAN
LAMIN MOHD. YUNUS J
[CIVIL APPEAL NO. 12-12 OF 1989]
8 JUNE 1992

CIVIL PROCEDURE: *Amendments in defence and counterclaim - Applying for party to be added as third defendant - Party added driver of vehicle - Appeal.*

The appellants (plaintiffs) primarily appealed on the decision of the Sessions Court Judge allowing one Lee Yew Fie, to be added as third defendant on the application of the respondents (defendants). Lee was the driver of the motor van involved in an accident and the second plaintiff had been a passenger in the said van**.**

Held:

[1] There was no reason to depart from the decision of *Hee Awa & Ors. v. Syed Muhammad Sazaly & Anor*. [1988] 1 MLJ 300. The matter of liability would not be effectually and completely determined if Lee, as driver of the vehicle involved, was not added as a party.

[Appeal dismissed with costs.]

Cases referred to:

Hee Awa & Ors. v. Syed Muhammad Sazaly & Anor. [1988] 1 MLJ 300 ***(foll)***
Chan Yee v. Chan Yoke Fong [1990] 1 CLJ (Rep) 36 ***(foll)***

Legislation referred to:

Rules of the High Court 1980, O. 15 r. 6
Subordinate Courts Rules 1980, O. 8 r. 6

For the appellants - S. Vasudevan; M/s. Balendran Chong Haranay & Bodi
For the respondents - Mahinder Singh; M/s. Mahinder & Co.

JUDGMENT

Lamin Mohd. Yunus J:

This is an appeal on the decision of the learned Judge of the Session Court of Kuantan for allowing the application of the defendants/respondents to amend their defence and counterclaim and to add one Lee Yew Fie as the third defendant. The learned Judge of the Court below allowed the application on the authority of the Supreme Court case of *Hee Awa & Ors v. Syed Muhammad Sazaly & Anor*. [1988] 1 MLJ 300. Lee Yew Fie was the driver of the Motor Van ABE 1778 at the material time and some time after the accident he lodged a police report *vide* Gambang Report No. 1280/86. His van was involved in the accident and he was then carrying two passengers one of whom was the second plaintiff/appellant. The application was made pursuant to O. 8 r. 6 of the Subordinate Courts Rules 1980. Order 8 r. 6 of the Subordinate Courts Rules 1980 is in *pari materia* with O. 15 r. 6 of the Rules of the High Court 1980. The case of the *Hee Awa* was again discussed by the Supreme Court some two years later in the case of *Chan Yee v. Chan Yoke Fong* [1990] 1 CLJ (Rep) 36 and it found that it had no reason to depart from Hee Awa. Lee Yiew Fie was the driver of the van that was involved in the accident and quite clearly the matter of liability would not be

effectually and completely determined if he was not added as a party. In regard to the amendments of the defence and the counterclaim, I found them to be merely consequential and minor. I therefore dismissed the appeal with costs.

Also found at [1992] 3 CLJ 1767